HARRINGTON, FOXX, DUBROW & CANTER, LLP
HENRY A. WIRTA, JR., State Bar No. 110097
650 California Street, 19th Floor
San Francisco, California 94108
Telephone (415) 288-6600
Facsimile (415) 288-6618
hwirta@hfdclaw.com

Attorneys for Defendant, DENNY'S, INC.

FILED
08 FEB 14 PM 4:03
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: CP DEPUTY

ORIGINAL

HARRINGTON, FOXX, DUBROW & CANTER, LLP
650 CALIFORNIA STREET, 19TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108
TELEPHONE (415) 288-6600

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHRIS KOHLER,

Plaintiff,

v.

DENNY'S, INC. dba DENNY'S RESTAURANT #1149; MILAN REAL ESTATE INVESTMENTS, LLC,

Defendants.

CASE NO. '08 CV 0131 JLS NLS

ANSWER OF DEFENDANT DENNY'S, INC. TO PLAINTIFF'S COMPLAINT

Defendant, DENNY'S, INC, (sued herein also as "dba DENNY'S RESTAURANT #1149) in answer to the Complaint herein alleges as follows:

1. Pursuant to Rule 8 of the Federal Rules Of Civil Procedure this answering defendant denies each and every averment contained in the Complaint and the whole thereof, and further denies that plaintiff has sustained damages in the sum or sums alleged, or by any other sums, or at all, by any reason of any act or omission for which this answering defendant is legally responsible.

///

///

CR

FIRST AFFIRMATIVE DEFENSE

2. The Complaint, as a whole, and each alleged cause of action, therein, fails to state a cause of action against this answering defendant.

SECOND AFFIRMATIVE DEFENSE

3. Plaintiff's Complaint is barred by the applicable statute of limitations, to be set forth in more particularity as discovery and investigation develops.

THIRD AFFIRMATIVE DEFENSE

4 The statutory law contained within Plaintiff's Complaint, except as specifically admitting in this answer, does not apply to this answering defendant.

FOURTH AFFIRMATIVE DEFENSE

5. Defendant has displayed a willingness and intent to comply with the statutory law cited within Plaintiff's Complaint and, therefore, defendant has not violated any statutory laws or any portions continued therein.

FIFTH AFFIRMATIVE DEFENSE

6. Plaintiff and his attorney are not entitled to monetary damages in the amount requested, or in any amount and/or attorney's fees as these are improper remedies.

SIXTH AFFIRMATIVE DEFENSE

7. Plaintiff's Complaint, and the causes of action therein, do not support a prayer for injunction.

SEVENTH AFFIRMATIVE DEFENSE

8. That the Unruh Civil Rights Act, set forth in Civil Code § 51, et seq., has no applicability to any cause of action as alleged by plaintiff.

HARRINGTON, FOXX, DUBROW & CANTER, LLP
650 CALIFORNIA STREET, 19TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108
TELEPHONE (415) 288-6600

HARRINGTON, FOXX, DUBROW & CANTER, LLP
650 CALIFORNIA STREET, 19TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108
TELEPHONE (415) 288-6600

EIGHTH AFFIRMATIVE DEFENSE

9. That the plaintiff lacks sufficient standing to assert some or all of the accessibility violations that he asserts in this action.

NINTH AFFIRMATIVE DEFENSE

10. That this action should be dismissed pursuant to the inherent power of this court to levy sanctions in response to abusive litigation practices (See e.g. Roadway Express, Inc. v. Piper, 447 U.S. 752, 765-766 (1980)).

TENTH AFFIRMATIVE DEFENSE

11. That the court should exercise its discretion to decline supplemental jurisdiction over the California state claims as asserted in the Complaint pursuant to 28 USC section 1367.

ELEVENTH AFFIRMATIVE DEFENSE

12. That plaintiff is not entitled to damages in the form of attorneys' fees, litigation expenses and costs as he did not allow the defendant a reasonable time to cure the claimed access carriers before filing this action against the defendant

WHEREFORE, this answering defendant prays that plaintiff take nothing by way of his Complaint on file herein, that this answering defendant be dismissed with its cost of suit incurred herein, and for such other and further relief as the Court may deem just and proper.

DATED: February 14, 2008

HARRINGTON, FOXX, DUBROW & CANTER

BY: [signature]
HENRY A. WIRTA, JR.,
Attorneys for Defendant DENNY'S, INC.

PROOF OF SERVICE
Kohler v. Denny's, Inc. dba Denny's Restaurant, et al.

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 650 California Street, 19th Floor, San Francisco, California 94108.

On **February 14, 2008**, I served the foregoing document described as:

ANSWER OF DEFENDANT DENNY'S, INC. TO PLAINTIFF'S COMPLAINT

on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Lynn Hubbard, III, Esq.
Scottlynn J. Hubbard, IV
Disabled Advocacy Group, APLC
12 Williamsburg Lane
Chico, CA 95926
Tel.:(530) 895-3252
Fax: (30) 894-8244

BY MAIL AS FOLLOWS:

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on **February 14, 2008**, at San Francisco, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

B- M L
BERLITA M. UMADHAY

HARRINGTON, FOXX, DUBROW & CANTER, LLP
650 CALIFORNIA STREET, 19TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108
TELEPHONE (415) 288-6600